

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
CLIFTON MALLERY a/k/a ENJAI OMAA EELE :
and AMNAU KARAM EELE, :
Plaintiffs, : 07 Civ. 2250 (DLC)
:
-v- : MEMORANDUM OPINION
: AND ORDER
NBC UNIVERSAL, INC., NBC UNIVERSAL :
TELEVISION STUDIO, TAILWIND :
PRODUCTIONS, TIM KRING, DENNIS HAMMER, :
ALLAN ARKUSH, JEPH LOEB and BRYAN :
FULLER,
Defendants. :
:
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Appearances:

For Plaintiffs:
John A. Coleman, Jr.
Freidberg Cohen Coleman & Pinkas, LLP
444 Madison Avenue, Suite 805
New York, NY 10022

For Defendants:
Marcia Beth Paul
Davis Wright Tremaine LLP
1633 Broadway
New York, NY 10019

DENISE COTE, District Judge:

On December 4, 2007, an Opinion and Order was entered on the docket in this action granting summary judgment for the defendants in this copyright action. Following several failed attempts to electronically file a notice of appeal from this Opinion and Order, plaintiffs moved on February 5, 2008, pursuant to Rule 4(a)(5), Fed. R. App. P., for an extension of

time to file their notice of appeal. Defendants have filed opposition. For the reasons stated below, plaintiffs' motion is denied as moot, as the notice of appeal filed by plaintiffs on February 5, 2008, in connection with their motion is timely and no extension of time under Rule 4(a)(5) is required.

Following the entry of the December 4, 2007, Opinion and Order on the docket, judgment was not set forth on a separate document as required by Rule 58, Fed. R. Civ. P. Thus, pursuant to Rule 4(a)(7)(A)(ii), Fed. R. App. P., judgment has not yet been "entered" within the meaning of Rule 4(a)(1)(A). As a result, the 30-day time limitation provided by Rule 4(a)(1)(A) has not yet begun to run, and will not begin to run until the earlier of (1) the setting forth of the judgment on a separate document as required by Rule 58, Fed. R. Civ. P., or (2) 150 days from the entry of the December 4, 2007, Opinion and Order. The plaintiffs' notice of appeal filed on February 4, 2008, is therefore timely as filed under Rule 4, Fed. R. App. P.¹

CONCLUSION

Plaintiffs' February 5, 2008, motion for an extension of time to file a notice of appeal is denied as moot, and the

¹ Plaintiffs may also take note that, under Rule 4(a)(7)(B), the "failure to set forth a judgment or order on a separate document . . . does not affect the validity of an appeal from that judgment or order."

notice of appeal filed on February 5, 2008, is deemed timely.

The Clerk of Court is directed to enter judgment in favor of the defendants pursuant to this Court's Opinion and Order of December 4, 2007.

SO ORDERED:

Dated: New York, New York
February 21, 2008



DENISE COTE

United States District Judge